

ORDINANCE 2015-24

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, APPROVING AMENDMENTS TO CHAPTERS 2 AND 3 OF THE SURPRISE MUNICIPAL CODE RELATING TO REPORTING AUTHORITY FOR THE CITY ATTORNEY.

WHEREAS, the City Council has determined it is in the best interests of the City of Surprise (the "City") to modify the Surprise Municipal Code to change the City Attorney's line of reporting from the City Council to the City Manager; and

WHEREAS, Ariz. Rev. Stat. § 9-271(B)(3)(a) requires the City Council to appoint the City Attorney; and

WHEREAS, in order for the City Council to modify the City Attorney's line of reporting, it is necessary for the City Council to delegate its authority/obligation under Ariz. Rev. Stat. § 9-271(B)(3)(a) to the City Manager; and

WHEREAS, the unique relationship that exists between the City Attorney and the City Council, including the City Attorney's ethical obligations to her/his client, the municipal corporate entity, requires further delineation of the roles of the City Manager and the City Attorney following the change in the line of reporting.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Surprise, Arizona, as follows:

Section 1. The Surprise Municipal Code, Chapter 2 (Administration), Article III (Appointed Officials), Division 1 (Generally), is hereby amended as follows:

Sec. 2-100. - Officials, generally.

The appointed officials of the city will consist of the city manager, city clerk, ~~city attorney~~, and the presiding city court judge. The city council hereby delegates to the city manager the council's statutory authority to appoint the CITY ATTORNEY, police chief, fire chief, ~~and~~ city engineer AND ANY OTHER OFFICER SPECIFIED BY STATE LAW.

Sec. 2-101. - Noninterference by council.

(a) Neither the city council nor any of its members may:

- (1) Direct or give orders, either publicly or privately, to any city employee under the supervision of an appointed official.
- (2) Request the appointment of any person to or removal from employment, or participate in any manner in the appointment or

removal of any employee, other than appointed officials under this article.

- (b) SUBJECT TO SUBSECTIONS (C) AND (D) BELOW, city council will address matters of concern directly with its appointed officials and will limit interaction with all other city employees to the purpose of inquiry.
- (C) THE CITY COUNCIL MAY, DURING A PUBLIC MEETING, COMMUNICATE DIRECTLY WITH AND PROVIDE DIRECTION TO THE CITY ATTORNEY REGARDING ANY MATTER PLACED ON A CITY COUNCIL AGENDA, INCLUDING EXECUTIVE SESSIONS.
- (D) CITY COUNCIL MEMBERS MAY DIRECTLY CONTACT THE CITY ATTORNEY FOR THE PURPOSES OF LEGAL ADVICE REGARDING CITY BUSINESS.

Section 2. The Surprise Municipal Code, Chapter 2 (Administration), Article III (Appointed Officials), Division 2 (City Manager), Section 2-122 (Powers and Duties) is hereby amended as follows:

Sec. 2-122. - Powers and duties.

- (a) The city manager may delegate the authority of the city manager to subordinate employees, EXCEPT FOR THE POWER TO APPOINT THOSE OFFICERS LISTED IN SECTION 2-100 OF THIS CODE.
- (b) The city manager is authorized to appoint, supervise, direct, discipline, and terminate all officers and employees of the city except appointed officials or as otherwise set forth in this article, SUBJECT TO THE FOLLOWING:
 - (1) WITH RESPECT TO ANY OFFICER LISTED IN SECTION 2-100, THE POWERS TO APPOINT, SUPERVISE, DIRECT, DISCIPLINE AND TERMINATE SHALL NOT BE DELEGATED.
 - (2) NOTHING IN THIS SECTION SHALL ALTER THE RESPONSIBILITIES OF THE CITY MANAGER AND THE CITY ATTORNEY AS SET FORTH IN SECTION 4.2 OF THIS CODE., NO LATER THAN SIXTY (60) DAYS PRIOR TO TAKING ANY ACTION TO DISCIPLINE OR TERMINATE THE CITY ATTORNEY FOR CARRYING OUT THE DUTIES SET FORTH IN SECTION 4.2 OF THIS CODE OR IN COMPLYING WITH THE CITY ATTORNEY'S ETHICAL OBLIGATIONS TO THE CITY, THE CITY MANAGER SHALL NOTIFY THE COUNCIL OF SUCH PENDING ACTION AND THE REASONS THEREFORE.

. . .

Section 3. The Surprise Municipal Code, Chapter 2 (Administration), Article III (Appointed Officials), Division 3 (City Attorney), Section 2-140 (Appointment) is hereby amended as follows:

Sec. 2-140. - Appointment.

The city ~~council~~ MANAGER will appoint a city attorney who will be the chief legal adviser of all officers, departments and agencies and of all officers and employees in matters relating to their official powers and duties. The city attorney will serve at the pleasure of the city MANAGER ~~council~~. The city council reserves the right to engage other legal counsel as AT its discretion.

Section 4. The Surprise Municipal Code, Chapter 2 (Administration), Article III (Appointed Officials), Division 3 (City Attorney), Section 2-141 (Terms and Conditions of Employment) is hereby amended as follows:

Sec. 2-141. - Terms and conditions of employment.

The terms and conditions of employment of the city attorney will be set forth in a written JOB DESCRIPTION ~~contract approved by majority vote of the city council~~ THE CITY MANAGER. ~~The employment contract may be terminated by majority vote of the city council at any time and for any reason. No term in the employment contract may be inconsistent with this division.~~

Section 5. The Surprise Municipal Code, Chapter 3 (Personnel), Article I (General Provisions), Section 3-2 (Definitions) is hereby amended as follows:

Sec. 3-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appointed official means an employee of the city appointed by the mayor and city council, WHETHER DIRECTLY OR BY DELEGATION TO THE CITY MANAGER, including the city manager, city attorney, presiding judge, associate judges, and city clerk, AND ANY OTHER OFFICER SPECIFIED BY STATE LAW.

. . .

Section 6. The Surprise Municipal Code, Chapter 3 (Personnel), Article I (General Provisions), Section 3-15 (Categories of Employment) is hereby amended as follows:

Sec. 3-15. - Categories of employment.

(a) *Employment categories.* All employment positions with the city fall into one of the following defined employment categories:

(1) *Appointed officials.* Positions whose incumbents are appointed by and serve pursuant to the terms of an employment contract with the mayor and city council, OR POSITIONS FOR WHICH THE APPOINTMENT POWER HAS BEEN DELEGATED TO THE CITY MANAGER PURSUANT TO SEC. 2-100 OF THIS CODE. Appointed officials include:

. . .

Section 7. The City Manager is hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED this 3 day of November, 2015.

John Williams, Vice Mayor

Attest:

Approved as to form:

Sherry Aguilar, City Clerk

Special Counsel to the City